

March 3, 2016

SUBMITTED ELECTRONICALLY VIA ECFS

Marlene H. Dortch, Esq.
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

**Re: Notice of *Ex Parte* Communication in MB Docket No. 15-216 –
Implementation of Section 103 of the STELA Reauthorization Act of 2014:
Totality of the Circumstances Test.**

Dear Ms. Dortch:

On March 1, 2016, the undersigned, together with Joseph E. Young, Senior Vice President and General Counsel of Mediacom Communications Corporation (“Mediacom”) and Thomas J. Larsen, Mediacom’s Senior Vice President, Government and Public Relations met with the following staff members from the Media Bureau and Office of General Counsel: Bill Lake, Michelle Carey, Steve Broeckert, Nancy Murphy, Martha Heller, Diana Sokolow, Kathy Berthot, and Raelynn Remy (Media Bureau); Marilyn Sonn and Susan Aaron (Office of General Counsel).

During the meeting, Mr. Young, Mr. Larsen and I discussed the opportunity presented by the Totality of the Circumstances proceeding mandated by STELARA for the Commission to adopt effective, meaningful reforms to the current retransmission consent regime. We reviewed the dysfunctional nature of the current retransmission consent regime and the consumer harm that results from the Commission’s failure to update its rules to ensure that retransmission consent negotiations produce outcomes that are consistent with and promote the consumer welfare objectives that led Congress to grant retransmission consent rights to broadcasters.

We specifically urged the Commission staff to review and consider the specific proposals contained in Mediacom’s Comments and Reply Comments in this proceeding, including:

1. Adopt a “cooling off period/mediation” requirement.
 - The Commission can and should consider adopting a “cooling off period/mediation” requirement (loosely modeled on concepts drawn from labor law) to create conditions

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whereby negotiations would be more likely to result in a mutually agreeable meeting of the minds and less likely to result in a threatened or actual disruption of service to consumers.

- Under the version of this proposal described in Mediacom's comments, it would be evidence of bad faith for a negotiating party not to agree to an extension of an expiring agreement (with a true-up) unless that party had publicly declared that the negotiations were at an impasse.
 - Such a declaration would trigger a 60-day cooling off period during which the existing agreement would remain in place and the MVPD could seek to arrange for the carriage of a substitute station to mitigate the harm to subscribers.
 - If the MVPD initiated the cooling off period by declaring an impasse, it would have to respect exclusivity requirements and contractual restrictions that may limit its ability to find a substitute station; however, if the station declares that the negotiations have reached an impasse, it would be a presumptive violation of the good faith requirement for that station to invoke exclusivity protection and/or for a distant station to refuse to negotiate with the MVPD based on a contractual agreement purporting to limit its authority to grant retransmission consent for out-of-market carriage.
 - During the cooling off period, it also would be presumptively bad faith for either party to refuse to submit to a fast track mediation process based on the parties' last offers. The outcome of this mediation would be the issuance (within 30 days) of a report to the parties that would be made public if the parties do not reach an agreement within 10 days after receiving the report.
 - If a blackout occurs at the end of the cooling off period and the parties thereafter resume negotiations and reach an agreement, the MVPD would be required to terminate carriage of any station carried as a substitute for the blacked out station.
- Under a variation of this cooling off period proposal discussed at the meeting, there would be no post-expiration "interim carriage" requirement. Rather, the cooling off period/mediation requirement would commence 90 days prior to the expiration date and a blackout could occur if, at the end of the 90 day period, no agreement had been reached.
 - During the first 30 days of this period, the parties would be required to exchange offers and counteroffers. If no agreement was reached by the end of the 30th day, it would be deemed a presumptive violation of the good faith negotiation requirement for either party to refuse to submit its last proposal to a mediator for review (with the cost of mediation shared).
 - The mediator would attempt to bring the parties together, but if no meeting of the minds is reached within 30 days, the mediator would present a report to the two parties that would become public if the parties

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still had not reached an agreement within 10 days. Either party could then rely on the report as part of a good faith complaint if it believes the findings in the report support such a complaint.

2. Adopt a rule **reconciling the expiration date** of all retransmission consent agreements.
 - The adoption of a rule making it a presumptive violation of the good faith requirement for a negotiating party to insist on a contract term with an expiration date that differs from the date on which the three-year election cycle ends. We noted that the legislative history of the retransmission consent provision indicates that the three-year cycle was not intended as a mere convenience, but rather was intended to provide a measure of protection against runaway price increases.
3. Adopt **transparency** requirements.
 - The adoption of a transparency requirement under which, as is the case with labor law, a bargaining party not only would be required to give a reason for rejecting the other party's proposal (which currently is the rule in retransmission consent negotiations), but also would have to substantiate that explanation.

We also urged the Commission to consider the adoption of a rule making it a presumptive violation of the good faith requirement for a negotiating party to refuse to negotiate for retransmission consent on a local station/local system basis. Such a requirement would mitigate a station group's ability to use the leverage it has with respect to its most valuable properties to bring up the price obtained for less valuable properties. It also would be consistent with and in furtherance of the Commission's plenary authority to promote localism (which first and foremost is the purpose of retransmission consent) and with the wide range of station-specific requirements imposed by the Communications Act and the Commission's rules (such as the granting of station specific licenses and the election of retransmission consent on a station-by-station basis).

Finally, we reiterated our support for the adoption of a rule prohibiting broadcasters from blocking otherwise freely available Internet transmissions as a negotiating tool.

If there are any questions regarding this matter, please communicate directly with the undersigned.

Sincerely,



Seth A. Davidson

Counsel to Mediacom

Communications Corporation

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